

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Victor's Tap, Inc. )  
Faik Ademi, President )  
Licensee/Suspension )  
for the premises located at ) Case No. 08 LA 47  
3049 North Cicero )  
)  
)  
v. )  
)  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Norma I. Reyes, Commissioner )

ORDER

OPINION OF CHAIRMAN FLEMING

This matter proceeded to hearing on an Amended Notice of Hearing advising the Licensee that the City was instituting proceedings to revoke its City of Chicago Retail Liquor License and all other City of Chicago licenses issued for the premises at 3049 N. Cicero. The charges were:

1. That on August 30, 2007, the licensee, by and through its agent, sold, offered for sale, kept for sale, or exposed for sale alcoholic liquor at retail without having a valid City of Chicago retail liquor license, in violation of Title 4, Chapter 60, Section 020(a), Municipal Code of Chicago.
2. That on August 30, 2007, the licensee, by and through its agent, failed to display a valid retail liquor license in a conspicuous place on the licensed premises, in violation of Title 4, Chapter 4, Section 210, Municipal Code of Chicago.
3. That on August 30, 2007, the licensee, by and through its agent, maintained a sign over the public way without a valid permit, in violation of Title 10, Chapter 28, Section 075 (g), Municipal Code of Chicago.
4. That on August 30, 2007, the licensee, by and through its agent,

maintained a canopy which extended over the public way without the required permit, in violation of Title 10, Chapter 28, Section 200, Municipal Code of Chicago.

The Deputy Hearing Commissioner entered Findings of Fact that the City met its burden of proof on Charges 1, 2, 3 and 4 and, based on the present violations and the Licensee's prior disciplinary history, found that a 21 day suspension was the appropriate penalty.

Since this is a review of a suspension the scope of review is limited to these three questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in light of the whole record.

There was substantial evidence in the record as a whole to affirm the findings on Counts 2, 3 and 4. The liquor license did not issue until October 1, 2007, and the canopy and sign permits were not resolved until September 13, 2007.

Counsel for licensee argues that there are due process implications with respect to the liquor license since the license was paid for on August 14, 2007, which was the day before the expiration of the current license. The problem with that argument is that the evidence is that there were two holds on the license on August 14, 2007. Liquor licenses will not be issued until the holds are resolved. Whether the holds were legitimate or were placed in error on this license

is not an issue before this Commission.

This Commissioner does not feel that there is sufficient evidence in the record as a whole to affirm the finding on Count 1. The only evidence on this issue was the testimony of Nikita Sanders. She is a Revenue Investigator II who was at the premises on August 30, 2007, to do a follow-up investigation of the sign and canopy permits. She saw the bar open and a bartender but could not recall if there were any patrons inside. There was no evidence of a sale of alcohol or even the presence of inventory of alcohol that would be considered proof of keeping or exposing for sale alcoholic liquor.

There is sufficient evidence in the record as a whole to support the findings on Charges 3 and 4 that respondent maintained a unlicensed sign and canopy. The issue on these two counts is whether such violations can be bases to suspend a liquor license. While the Mayor as Local Liquor Control Commissioner can revoke or suspend for violation of any city ordinance the counts require a reasonable constitution of that power and its application is limited to violations of statutes, ordinances or regulations that are fairly related to the control of liquor. *Askew v. Daley* 62 Ill.App.3d 370. These ordinances are not fairly related to the control of liquor and violations of these ordinances cannot be a basis for suspension of the liquor license.

The final issue to be decided is whether the 21 day suspension should be upheld in light of the previous findings. The Findings of Fact of the Deputy Hearing Commissioner does not state if the 21 day suspension was based on the totality of the findings or was concurrent on each

of the findings. Since this Commission does not have the power to remand for clarification on this point, this Commissioner takes the position that the 21 day suspension was concurrent on all charges. With that presumption it must be decided if the 21 day suspension for failure to display a valid retail liquor license is so arbitrary and capricious as to require reversal. While this Commissioner would not have recommended that long of a suspension based on the past history, the 21 day suspension is not so arbitrary or capricious as to require reversal of the entire suspension.

OPINION OF COMMISSIONER KOPPEL

I concur with Chairman Fleming's opinion.

OPINION OF COMMISSIONER SCHNORF

I have reviewed Chairman Fleming's opinion and agree with him on his findings on Counts 1, 3 and 4. I also agree that the violations in Counts 3 and 4 are not so fairly related to the control of liquor that they can serve as a bases for suspension of the liquor license.

I respectfully disagree with the Chairman's finding on Count 2. Since there is insufficient evidence to support the charge that the respondent sold or offered for sale alcoholic liquor at retail as alleged in Count 1, there is no reason that the licensee needed to display a valid retail liquor license on August 30, 2007. Since there is insufficient evidence in the record as a whole to support the findings in Charges 1 and 2 and since the violations in Charges 3 and 4 cannot be used to suspend this liquor license, I would reverse the 21 day suspension.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor

license of the appellant for TWENTY-ONE (21) days is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court the Petition for Rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: May 27, 2009

Dennis M. Fleming  
Chairman

Irving J. Koppel  
Member